

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35719

STATE OF IDAHO,)	2010 Unpublished Opinion No. 416
)	
Plaintiff-Respondent,)	Filed: April 2, 2010
)	
v.)	Stephen W. Kenyon, Clerk
)	
JOSHUA M. LEPINSKI,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the First Judicial District, State of Idaho, Kootenai County. Hon. Lansing L. Haynes, District Judge.

Order modifying sentence on Idaho Criminal Rule 35 motion for reduction of sentence, affirmed.

Molly J. Huskey, State Appellate Public Defender; Eric D. Fredericksen, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

Before LANSING, Chief Judge, GRATTON, Judge
and MELANSON, Judge

PER CURIAM

Joshua M. Lepinski was convicted of failure to register as a sex offender, Idaho Code § 18-8309. The district court imposed a unified sentence of ten years with six years determinate, suspended the sentence and placed Lepinski on supervised probation. Subsequently, Lepinski was found to have violated several terms of the probation, and the district court consequently revoked probation and ordered execution of the original sentence. Lepinski filed an Idaho Criminal Rule 35 motion to correct an illegal sentence. The district court granted the motion and reduced Lepinski's sentence to a unified sentence of five years with three years determinate. Lepinski filed an I.C.R. 35 motion for reduction of his newly imposed sentence. The district court granted the Rule 35 motion and imposed a unified sentence of five years with two years

determinate. Lepinski appeals contending that the district court erred in failing to place him on probation or reduce his aggregate sentence.

A Rule 35 motion is a request for leniency which is addressed to the sound discretion of the sentencing court. *State v. Knighton*, 143 Idaho 318, 319, 144 P.3d 23, 24 (2006); *State v. Allbee*, 115 Idaho 845, 846, 771 P.2d 66, 67 (Ct. App. 1989). In presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the motion. *State v. Huffman*, 144 Idaho 201, 159 P.3d 838 (2007). Our focus on review is upon the nature of the offense and the character of the offender. *State v. Reinke*, 103 Idaho 771, 772, 653 P.2d 1183, 1184 (Ct. App. 1982). Where a sentence is not illegal, the appellant must show that it is unreasonably harsh in light of the primary objective of protecting society and the related goals of deterrence, rehabilitation and retribution. *State v. Broadhead*, 120 Idaho 141, 145, 814 P.2d 401, 405 (1991), *overruled on other grounds by State v. Brown*, 121 Idaho 385, 825 P.2d 482 (1992); *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982).

Having reviewed the record, including the new information submitted with Lepinski's Rule 35 motion, we find no abuse of discretion. Accordingly, the district court's order modifying Lepinski's sentence pursuant to his I.C.R. 35 motion is affirmed.